

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:20-CV-00363-M

JACOB QUEERN,)
Plaintiff,)
v.) ORDER
THE UNITED STATES,)
Defendant.)

This matter comes before the court on a Memorandum and Recommendation (“M&R”) issued by United States Magistrate Judge Robert T. Numbers, II pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b) [DE 78]. After finding that the Plaintiff had failed to appear and to comply with court orders, Judge Numbers issued an order for Plaintiff to show cause why the case should not be dismissed for Plaintiff’s failure to prosecute and warned Plaintiff that any failure to comply “may lead to the dismissal of his lawsuit.” Plaintiff did not respond to the order; therefore, Judge Numbers now recommends that the court dismiss Plaintiff’s claims without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. DE 78; *see also Attkisson v. Holder*, 925 F.3d 606, 625 (4th Cir. 2019), as amended (June 10, 2019) (“As provided by Rule 41(b), [] involuntary dismissals are appropriate when ‘the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order.’ Given the inherent judicial authority to make such dismissals, a court may, in appropriate circumstances, enter such a dismissal *sua sponte*, even absent advance notice of ‘the possibility of dismissal.’”).

To date, no objections have been filed.¹

A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); *accord Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for "clear error" and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated therein, Plaintiff's claims against Defendant are DISMISSED WITHOUT PREJUDICE. The Clerk of Court is directed to close this case.

SO ORDERED this 9th day of February, 2023.



RICHARD E. MYERS II
RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

¹ Judge Numbers issued the M&R on January 20, 2023. Objections were due to be filed on or before February 3, 2023. *See* DE 78. The M&R was submitted to this court for disposition on February 7, 2023.